

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MARGARET P. BYERS, *et al.*,

Plaintiffs,

v.

Civil Action No.: 3:23cv801 (RCY)

CITY OF RICHMOND, *et al.*,

Defendants.

CORPORAL GORDON PAINTER'S MOTION TO DISMISS

COMES NOW Corporal Gordon Painter ("Corporal Painter"), by counsel, pursuant to Fed. R. Civ. P. 12(b)(6), and respectfully requests that the Court dismiss with prejudice Counts Three and Five of the Amended Complaint (ECF No. 81), the only two Counts that pertain to him.

As explained in detail in Corporal Painter's Memorandum in Support, Count Three fails to state a claim against Corporal Painter because his use of force was objectively reasonable based on the totality of the circumstances. In addition, Corporal Painter is entitled qualified immunity on the allegations in Count III because his actions did not violate clearly established law.

Count Five fails to state a claim against Corporal Painter because, as a matter of law, when an officer's actions are reasonable, like Corporal Painter's, they cannot be negligent or wrongful. Moreover, the facts pled in the Amended Complaint, including the Exhibits, establish that Corporal Painter is entitled to sovereign immunity on claims of simple negligence; that he exercised some degree of care causing the claim of gross negligence to fail; and that he did not act consciously in disregard of another person's rights, which causes the claim of willful and wanton conduct to fail.

For the reasons stated above and those set forth in the Memorandum in Support of Corporal Gordon Painter's Motion to Dismiss, Corporal Painter respectfully requests that the Court grant his Motion to Dismiss with prejudice and dismiss him from the case.

CORPORAL GORDON PAINTER

By: /s/ Julie A. C. Seyfarth
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2024, I electronically filed the foregoing Corporal Gordon Painter's Motion to Dismiss with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

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